

L99CbsgC

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
3 -----x

4 BSG RESOURCES (GUINEA)
5 LIMITED, ET AL.,

6 Plaintiffs,

7 v.

17 CV 2726 (OTW)

8 GEORGE SOROS, ET AL.,

9 Defendants.
10 -----x

11 New York, N.Y.
12 September 9, 2021
13 11:00 a.m.

14 Before:

15 HON. ONA T. WANG,

16 Magistrate Judge

17 APPEARANCES

18 REED SMITH LLP
19 Attorneys for Plaintiff
BY: LOUIS SOLOMON
MICHAEL LAZAROFF

20 WILLKIE FARR & GALLAGHER LLP
21 Attorneys for Defendants
22 BY: GABRIELLE K. ANTONELLO
23 BENJAMIN P. McCULLEN

L99CbsgC

1 (Case called)

2 MR. SOLOMON: Good morning, your Honor. Louis
3 Solomon, Reed Smith. With me is Mr. Michael Lazaroff for
4 plaintiffs.

5 THE COURT: Good morning.

6 MS. ANTONELLO: Good morning, your Honor. Gabriella
7 Antonello, Willkie Farr & Gallagher for defendants.

8 MR. MCCULLEN: Benjamin McCullen, Willkie Farr &
9 Gallagher on behalf of the defendants.

10 THE COURT: When you're speaking, please pull the
11 microphone closer to you now that we're all wearing masks
12 again. It's extremely helpful if anyone is speaking to get
13 really close to the microphone so we can all hear, and it will
14 save your lungs.

15 I have an agenda that is based loosely on the agenda
16 that the parties have submitted.

17 First question, any report, Mr. Solomon or
18 Mr. Lazaroff, on events going on in Guernsey?

19 Please, you can sit down if you like so it's easier to
20 speak into the microphone.

21 MR. SOLOMON: Your Honor, I will apologize in advance
22 for about forgetting about sitting down, but I will try to keep
23 my foresight.

24 We learned early this morning, in fact, on my way
25 here, that the Guernsey application was heard and granted.

L99CbsgC

1 There is apparently an order which we don't have. I'm told by
2 counsel there that it should be public, and when we get it, we
3 will supply it to your Honor and to defendants.

4 THE COURT: Can you summarize for me what that means
5 then. That means that the joint administrator is no longer the
6 joint administrator or they no longer have to prosecute this
7 case?

8 MR. SOLOMON: So the joint administrator continues to
9 be the joint administrator. I think the obligation to continue
10 has been removed. There are other requirements that the joint
11 administrator has and will have to follow. As we understand
12 it, the joint administrator now will continue to assess whether
13 to proceed with the case, but now is not obliged pursuant to
14 that paragraph of the order.

15 In terms of timing, I'm not sure exactly what your
16 Honor asked, but if I may volunteer, the joint administrator
17 continues to be of the view where we were 30 days ago when we
18 had suggested a 60-day stay of the case and the adjourning of
19 rulings and deadlines here and still feels that, within 30 to
20 45 days, it should have an answer to the question whether and
21 under what terms and conditions to continue or to withdraw this
22 lawsuit.

23 In light of that, we were going to suggest that, since
24 the parties have to be back before your Honor on October 28th,
25 and a time has been set anyway, we would like there to be a

L99CbsgC

1 stay of proceedings or at least a standdown of normal overdoing
2 it that, I think, has characterized this case in the last 30
3 days by Mr. Soros, and appear then and be able to answer any
4 questions. If the matter can be dealt with before then, we
5 have every interest in doing so.

6 THE COURT: Okay. Thank you. It looks like either
7 Mr. McCullen or Ms. Antonello might have something to say. So,
8 go ahead.

9 MR. MCCULLEN: Yes, your Honor. Again, for the
10 record, Benjamin McCullen, Willkie Farr & Gallagher on behalf
11 of defendants.

12 Your Honor, I learned this information just outside
13 this morning, Mr. Solomon reported, as he said, he found out
14 this morning. So, I'm sort of reacting in realtime here on the
15 fly.

16 Your Honor, Mr. Solomon is correct that, at different
17 points in time in the past, they have raised with us the
18 possibility of a stay of these proceedings. At the time we
19 said we were willing to consider that and evaluate it, but we
20 needed to understand the complete facts and circumstances
21 surrounding the application. We have more clarity as of today,
22 but we still don't completely know. I know the last time we
23 were in front of your Honor this was raised, and I think your
24 Honor at the time had indicated perhaps a disinclination to
25 stay the action. It's something I haven't had a chance to

L99CbsgC

1 speak with my clients with in light of what we heard from
2 Mr. Solomon today.

3 I will say that, obviously, my clients are in a very
4 difficult position here, because from our perspective, they're
5 incurring significant fees. At this point, they're in the case
6 and they are the only ones who are -- from our perspective, we
7 feel we are the only ones who are complying with the court
8 orders at this point in time.

9 I think that, what I would say, your Honor, is 60 days
10 certainly seems excessive to us. If the plaintiff's position
11 is that there is going to be a decision, then I think we could
12 be amenable to something that would reduce the legal spend in
13 the near term while that assessment is being made. That
14 timeline that's been proposed that I just heard from
15 Mr. Solomon seems, to me, to be too long. The joint
16 administrators have had this case for, I believe, a year now.
17 There is nothing -- your Honor is aware of everything that's
18 going on in this case. There are no new facts and
19 circumstances that are coming to light. If they legitimately
20 need to make an assessment about the costs and benefits of
21 proceeding forward with this case, then that may be
22 appropriate.

23 I think, though, if, under any circumstances, your
24 Honor, what I would suggest is that we proceed apace with the
25 pending motion for sanctions. Perhaps we put discovery on hold

L99CbsgC

1 so that we don't have to incur additional costs, for instance,
2 in connection with preparation for Mr. Cramer's deposition.
3 But the pending sanctions motion, we seek a variety of relief,
4 including fee shifting, and, frankly, dismissal of the action
5 on the basis of their noncompliance with the order. I don't
6 know if your Honor has had a chance to look at that order yet
7 or not. I think that that motion is an important decision
8 point for whatever consideration the joint administrators are
9 doing, whatever cost benefit analysis they are doing. So we
10 would like to proceed forward with that. We think we're
11 entitled to that relief. If the plaintiffs would like to put a
12 short stay on other deadlines while we proceed forward with
13 that, speaking on the fly, your Honor, having just heard this,
14 I feel comfortable that that's something we would be able to
15 do.

16 THE COURT: Okay. Let me start with the sanctions
17 motion, because defendants have indicated they would like to
18 keep it going.

19 Unless and until defendants withdraw the sanctions
20 motion, my understanding is that it can survive even beyond the
21 withdrawal of this case, if that is what the joint
22 administrators decide to do with this case. So that I kind of
23 leave up to the parties. I'm not going to proceed apace with
24 it because, frankly, I have motions on my six-month list that
25 were earlier filed that need to be taken care of first.

L99CbsgC

1 My understanding is that the plaintiffs have not yet
2 responded to it; is that right?

3 MR. SOLOMON: Correct, your Honor.

4 THE COURT: What's your response date right now?

5 MR. SOLOMON: Our response date is the 20th of
6 September, Judge.

7 THE COURT: Okay. If you want to confer with
8 defendants and discuss an adjournment of that date and agree to
9 an adjournment of that date or a delay of that date for a
10 matter of weeks, I would be agreeable to that, but I'll wait
11 for you to submit a joint letter if you want to change the
12 date, or if you can't agree to it, you can make a request
13 separately. I am inclined to probably let that go until we see
14 what happens with the case as a whole, because the sanctions
15 motion will still be live, the facts are the facts, and if
16 defendants withdraw the motion, if the case is dismissed, then
17 we won't be dealing with it. If they decide to pursue it, we
18 will, unfortunately, still have to deal with it.

19 The other issue I had was Mr. Cramer's deposition.
20 Right now, Mr. Cramer has an order by the Court to submit to a
21 voluntary deposition on either September 23rd or 30th. I
22 wanted to hear from the parties whether this is something that
23 you feel can be adjourned or whether we should wait and see in
24 the near term — I guess September 23rd is two weeks from now —
25 whether anything changes with the case. Obviously, if the case

L99CbsgC

1 goes away, then Mr. Cramer doesn't need to be deposed, but I
2 hear defense counsel saying they would perhaps like to stem
3 some of the legal fees and costs, and preparing for the Cramer
4 deposition would be significant. So I wanted to hear from the
5 parties on what your thoughts were on the Cramer deposition.
6 What I would like to not see is this case continuing and
7 continuing to drag, and Mr. Cramer then is not under any order
8 to appear for a deposition and we're back where we were a few
9 months ago.

10 MR. MCCULLEN: From defendant's perspective, your
11 Honor, I think pursuing discovery and putting our sanctions
12 motion on hold is the worst of all worlds, because then we have
13 to do the work, they can take their good old time figuring out
14 what they want to do with no threat of fee shifting, which is
15 not only appropriate, it's very warranted here. So, we
16 obviously want to take guidance from the Court in terms of your
17 Honor's thinking, in terms of whether a stay makes sense, if
18 that's something your Honor would be willing to consider.
19 Then, if so, like I said, our request would be to have the
20 sanctions motion go forward. I heard what your Honor said on
21 that, but if the sanctions motion is going to be put on ice
22 temporarily, which we don't think it should, but if it's going
23 to be, then the depositions, I believe, as well, should be,
24 because if we are continuing to do work and incurring fees and
25 plaintiffs are able to just sit on the sidelines and let us run

L99CbsgC

1 around taking discovery with no threat of fee shifting, which
2 is warranted and appropriate here, that is not an outcome we
3 would like.

4 So that's why I think, though, your Honor, it's also
5 important, frankly, to keep a tight leash on this joint
6 administrator consideration period, however long it's going to
7 be. I don't think this should be a 60-day stay. I just can't,
8 for the life of me, even articulate what they need to think
9 about for 60 days. We can do a couple-week stay if they
10 legitimately need that stay. Then, at that point -- and this
11 is why we've requested some other discovery deadlines, which I
12 think we're going to get to, and my colleague can address, but
13 we asked for additional documents to be produced, things like
14 that. They can have a short period of time, think about
15 whether they are going to pursue this action or not. If
16 they're not, get it dismissed, but if they are, then let's do
17 this and let's do it the way discovery happens in the Southern
18 District of New York, which is they produce the documents that
19 they've previously acknowledged may contain responsive
20 materials, then we go to depositions, and we go from there.

21 So I hope I answered your question, your Honor. If I
22 didn't --

23 THE COURT: Yes, you sure did.

24 MR. SOLOMON: Your Honor, when we were here the last
25 time before your Honor, we had the pleasure of some summer

L99CbsgC

1 interns. I'm sorry this didn't come up then, your Honor will
2 remember fondly, Judge Martin. Judge Martin used to remind us
3 when counsel would try to preargue a motion that wasn't fully
4 briefed, please don't do that, because, frankly, I'm not going
5 to remember anyway. Right. We're here now because of the
6 prior patch that Mr. Soros continues to want to throw himself
7 into --

8 THE COURT: Stop. Stop.

9 MR. SOLOMON: Your Honor --

10 THE COURT: Stop. No, stop. I'm going to stay the
11 case until October 1st. There will be a joint status letter.
12 If the case is not over and withdrawn and dismissed by October
13 1st, there will be a status letter -- you know what, I'm not
14 going to make you submit a joint status letter. I'm not going
15 to put you through that. Parties each can write their own
16 status letter October 1st. If the case is not dismissed before
17 October 1st, those status letters will have set a new date for
18 Mr. Cramer's deposition. If the case is not dismissed by
19 October 1st, then the response to the sanctions motion is due
20 October 8th.

21 MR. SOLOMON: That's fine, your Honor. There is one
22 other filing that, with your Honor's permission, will be a page
23 or less. We would like to respond. Your Honor, I think,
24 received a letter from Covington on the 7th, I think it was
25 October 7th, and your Honor had given us until tomorrow to put

L99CbsgC

1 in a response --

2 THE COURT: This is on the potential privilege issue
3 with Cramer?

4 MR. SOLOMON: Correct.

5 THE COURT: That's also stayed. Okay. Mr. Cramer is
6 not getting deposed in the month of September because the case
7 is stayed; right? So, that deadline is also stayed.

8 MR. SOLOMON: I'm just concerned that there is
9 information in that letter that is incorrect and we feel that
10 we needed to respond to it. It doesn't involve --

11 THE COURT: I'm not preventing you from responding to
12 it. I'm just saying that all of this becomes moot if
13 Mr. Cramer doesn't get deposed. If the case is dismissed, it's
14 moot. If, at that point, you want to write in and correct some
15 facts or assertions, I'm not going to stop you from filing
16 something on the docket, but I do not want it to be a response
17 to the motion because you got the stay you're asking for, and I
18 do not want it to be anything that's asking for relief from the
19 Court.

20 MR. SOLOMON: None whatsoever, Judge.

21 THE COURT: Okay. What else do we have that's live,
22 then, if the case is stayed until October 1st?

23 MR. MCCULLEN: If I can have a second to confer with
24 my colleague, Judge?

25 THE COURT: Sure.

L99CbsgC

1 MR. MCCULLEN: Your Honor, from defendant's
2 perspective, there are additional issues we raised in the
3 letter, but our suggestion would be let's see where we are on
4 the 1st, we'll put it in our status letter. We obviously asked
5 for some relief and deadlines. If the case isn't dismissed,
6 then we can present that to your Honor at the beginning of
7 October and your Honor can consider it at that time.

8 THE COURT: Yes. Okay.

9 MR. SOLOMON: Nothing from the plaintiff. Thank you,
10 Judge.

11 THE COURT: Thank you very much. We are adjourned.
12 Please order a copy of the transcript and share the cost.

13 * * *

14

15

16

17

18

19

20

21

22

23

24

25